Petition

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ALEXANDER L. STEVAS,
CLERK

81-511

Case No._____

IN THE

Supreme Court of the United States

October Term, 1981

Grady Allen Bradley
Petitioner,

V.

Brion Corporation of Nashville, et al.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Grady Allen Bradley
861 Airway Circle
Nashville, Tn.
1-615-883-9336

I Questions For Review

First Does a Federal Bankruptcy Courth have jurisdiction to determine the validity of a foreclosure sale forelcosed under orders, and permission, of the bankruptcy court given after petition for involuntary bankruptcy, and in same hearing in which adjudication was made?

Second In the absence of jurisdiction, does the Sixth Circuit Court of Appeals have the power to affirm a decision of the district court, instead of dismissing it?

Third Does a bankrupt have right, with permission of bankruptcy court and before appointment of trustee, to become appelant (and "party of interest") for purpose of voiding an improper foreclosure sale in order to aid himself and his creditors ?

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III. GROUNDS ON WHICH JURISDICTION IS INVOLVED

Date of Judgment: February 23, 1981

Date of Rehearing Order: April 6, 1981

This petition is requested because of the sincere belief that a very serious injustice has been done to the bankrupt and his creditors. Certainly it is not unreasonable to expect that if the appeals court did have jurisdiction in this matter, the responsibility, and duty, of the appeals court was to decide the case on its merits.

IV. STATEMENT OF CASE

In June of 1976 the appellees began advertising for foreclosure on delinquent mortgage, purchased for express purpose of foreclosure in order to gain ownership. (Appellant had just succeeded in 2 year chancery court action to regain title to property). The foreclosure was advertised by state law, but it was not in the state court.

On June 11, 1976 a petition was filed to place the appellant in involuntary bankruptcy.

On July 19, 1976 the bankruptcy court restrained the appellees from proceeding the foreclosure scheduled for July 21, 1976.

On September 7, 1976; the bankruptcy court held hearing in which it removed the stay order of July 19, 1976, with permission, and order, to proceed again with foreclosure proceedings. Also, the bankruptcy court adjudicated the bankrupt at this same hearing

(without notice to bankrupt or anyone of this action) on ~~October~~ SEPT. 8, 1976, the stay order was removed by order of bankruptcy court. On ~~October~~ SEPT. 9, 1976, the order of adjudication was given by the bankruptcy court.

On October 8, 1976 at 11:00 AM , the bankruptcy court refused to accept $190,000 cashiers check or to again stop the foreclosure sale scheduled for 12:00 that same day.

On October 8, 1976 at 12:00 Noon the foreclosure was scheduled for Noon, but began at 11:53. On arriving at sale at 12:01, the sale was completely over. There were seven issues on which the appellant claimed this to be an invalid sale.

On April 12, 1977 a trial in bankruptcy court was concluded to determine the validity of this sale.

On May 31, 1978 the bankruptcy court issued an order declaring the sale to have been valid. There are no references to a single conclusion of law or legal precedent.

On January 23, 1979 the district court affirmed the decision of the bankruptcy court. There are no references to a single conclusion of law or legal precedent.

On February 23, 1981 the circuit court affirmed the decision of the district court but refused to discuss the merits of the case with statement that "as to any improprieties in the conduct of the state foreclosure sale, the only remedy for correction was to apply to the state court". There are no references to a single conclusion of law or legal precedent.

On April 6, 1981 the circuit court denied petition for rehearing on grounds that it lacked"merit."

The sixth circuit court of appeals refused to act on the merits of this case, stating it to be a state matter. The argument in this petition will show that the circuit court does have jurisdiction, as did the bankruptcy court, and the district court. Also that the bankrupt has standing in the court.

V. ARGUMENT

This petition for a writ of certiorari is based on the following reasons for consideration.

> FIRST the Sixth Circuit Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this court.
>
> SECOND It has departed from the accepted and usual course of judicial proceedings.
>
> THIRD Certiorari can be issued to review a performed judicial act or error relating to the parties or the subject matter resulting in a denial of justice. Either the appeals court did have jurisdiction, or it did not.

First: If the court did have jurisdiction it failed in its responsibility and duty to determine the case on its merits.

Second If the court did not have jurisdiction, it was in error in not dismissing the suit instead of affirming the decision of the district court. Also the court would have been in error with any reference to the facts in the case. (Such as "apprasial value.")

ARGUMENT - 2

It is obvious that the primary effect of the Appeals Court's decision was to affirm the judgment of the district court without any involvement in the facts and merits of the case; and to close the door on the bankrupt and his creditors by stating that it was too late to apply to the state court, and that the bankrupt had no standing in court, regardless.

Re: Jurisdiction APP 13-14 The appeals court does possess jurisdiction in this matter, which has now been in federal courts for over four years. There were no objections by the appellees, the appellant, or their attorneys. The bankrupt~~cy~~ accepted jurisdiction, the district court accepted jurisdiction.

The only basis on which the appeals court could possibly determine that the foreclosure matter was the exclusive jurisdiction of the State court would be that it acquired jurisdiction prior to the institution of the bankruptcy proceedings.

ARGUMENT - 3

A study of the facts in this case will show:

1. That the bankruptcy court at no time gave "permission", or "yielded" to the state court for any control of the foreclosure preceedings.

2. That although the advertising for foreclosure had begun the first time prior to the petitions for involuntary bankruptcy, the matter had not actually been placed in control or jurisdiction of the court.

3. That the proceedings under which the foreclosure was actually made were all begun after the petition for involuntary bankruptcy, and in fact after the actual adjudication.

4. That foreclosure proceedings under direct orders of the bankruptcy court and under control of the trustee in

bankruptcy, still are handled under the state laws of foreclosure, which of course, does not make it a state matter.

It is clear that at no time did the foreclosure proceedings or the conflict resulting from the foreclosure sale become the jurisdiction of a state court.

Re: Standing in Court
APP. 15-16

Although the bankruptcy court and the district court accepted the bankrupt's standing in court, the appeals court stated "the bankrupt could not complain because he did not possess standing"

The law is plain regarding the bankrupt's ability to bring action for the benefit of himself and his creditors. Rule 307 In addition, since no objection was made by anyone regarding the bankrupt's standing in court, it is too late now to raise the issue on appeal. (4C8B. 8262)

ARGUMENT - 5

Re: Dismissal of Suit

Although the facts show the appeals court to have jurisdiction in this matter, the lack of jurisdiction would most certainly demand the dismissal of the suit, rather than affirming the decision of the district court. (14 C8S § 23)

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§ 7364. Jurisdiction over Subject Matter

The problem of jurisdiction is present in every case and, unless a federal court has jurisdiction over the subject matter, it may not entertain the case or controversy. It is well-established that a lack of jurisdiction over subject matter cannot be waived and that the parties by consent cannot confer such jurisdiction upon the court even by going to trial without objection.[11] Subject matter jurisdiction is of the utmost importance. Without it the court can do nothing except dismiss the action for want of jurisdiction. If it proceeds, any judgment it renders is null and void. Thus, the first question always is: Does a federal court have jurisdiction over the subject matter? Such jurisdiction is of limited nature and is spelled out principally in Article III of the United States Constitution and Acts of Congress pursuant thereto.

AUTHORITIES

1 (Re: Jurisdiction)

8 C.J.S. Section 143. In a proper case it may set aside a foreclosure sale of realty of the alleged bankrupt.

A bankruptcy court will permit a state court to try title to property in the actual or constructive possession of the bankruptcy court, where unsettled questions of state property law are involved.

5 F PR Dig- 261- D.C. Cal. 1939. The bankrupty court has summary jurisdiction to determine claims against, title to, and liens upon property in the actual or constructive possession of the bankruptcy court by and through its officers, such as receiver and trustees, and by and through the bankrupt himself, whether that possession existed at the commencement of the bankruptcy proceeding or arose subsequently, and such jurisdiction cannot be disturbed by the processes of other courts.

In re American Fidelity Corporation, 28 F. Supp. 462.

AUTHORITIES (Re: Jurisdiction) - (1)

Section 342 (4) Power to Determine Jurisdiction

The bankruptcy court has the power to determine whether the conditions requisite for the exercise of summary jurisdiction exist, such as whether the adverse claim is substantial or merely colorable.

b. By Permission of Bankruptcy Court.

Where the bankruptcy court has acquired exclusive jurisdiction by reason of its custody of the res, an action affecting the property may be brought in a state court only with the permission of the bankruptcy court, the granting of which depends on the facts in each case.

8 C.J. S. - Section 29 (1). The jurisdiction of the bankruptcy court may be exercised without regard to the rules of comity. All the property of the bankrupt becomes subject to the control, or the exclusive jurisdiction of the bankruptcy court.

AUTHORITIES (Re: Jurisdiction) -(1)

On the filing of a petition in bankruptcy the jurisdiction of the bankruptcy court supplant and supersedes any jurisdiction obtained by a state court in an insolvency proceeding involving the estate of the bankrupt.

AUTHORITIES

(a) (Re: Standing in Court)

Appeal. The bankruptcy of a party against whom a judgment has been rendered does not prevent the taking or prosecution of an appeal in his name; it does not require the dismissal of the appeal; and it does not preclude the appellate court from rendering judgment on the appeal bond. If the trustee does not assert his superior right to prosecute an appeal from a judgment in a state court against the bankrupt, the bankrupt may do so prior to his discharge; where no objection is raised by the trustee to the prosecution of an appeal by the bankrupt, it may be assumed that the trustee is not interested and waives his primary right.

8A C.J.S. Section 489-490, The question of the bankrupt's lack of right to commence or prosecute the action may be raised by demurrer. or answer, according as the adjudication of bankruptcy and the appointment and qualification of a trustee do or do not appear on

the face of the complaint. To be available, the objection must be pleaded and properly set up; the bankruptcy of plaintiff does not deprive a state court of jurisdiction of a pending action. and is not ground for arrest of judgment.

Stay of suit. The mere fact of bankruptcy does not operate as a stay of a suit in which a bankrupt is plaintiff. A stay of proceedings granted on the appointment of a receiver does not prevent the bankrupt from prosecuting pending suits. Such a stay refers to suits or actions against the bankrupt; it is operative on the persons having process against the bankrupt; and it lapses and is superseded on the appointment of a trustee. An order of court obtained by the trustee is necessary to stay a suit previously instituted by the bankrupt.

No. 79-1303

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In Re: Grady Allen Bradley	:	
Bankrupt	:	
Grady Allen Bradley	:	
Appellant	:	
v.	:	ORDER
Brion Corporation of Nashville, et al.	:	
Appellees	:	
	:	

Before WEICK and ENGEL, Circuit Judges and HILLMAN, U. S. District Judge. *

This appeal is from an order of the district court declining to set aside a state court foreclosure sale of real estate formerly owned by the bankrupt for irregularities in connection with the sale. The foreclosure proceeding was pending prior to bankruptcy but was conducted and concluded after the bankruptcy

court declined to interfere with sale.

The bankrupt's title to the real estate vested in the trustee in bankruptcy as of the date of the filing of the involuntary petition in bankruptcy which resulted in an adjudication of bankruptcy and a discharge of the bankrupt from the payment of his debts.

As to any improprieties in the conduct of the state foreclosure sale, the only remedy for correction was to apply to the state court. The bankruptcy court did not authorize the receiver or trustee in bankruptcy to take such action timely, and it is too late now. The bankrupt could not complain because he did not possess standing.

The property sold at foreclosure sale for $160,000 which was the appraised value thereof. The rejection of assets rested within the sound discretion of the district court. We have no jurisdiction to question the adjudication of the bankrupt as he did not timely appeal therefrom.

It is therefore ordered that the judgment of the district court be affirmed.

No. 79-1303 -

ENTERED BY ORDER OF THE COURT

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Clerk

ISSUED AS MANDATE: APRIL 28, 1981
COSTS: NONE

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* Honorable Douglas W. Hillman, United States District Judge for the Western District of Michigan, sitting by designation.

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v.	:	ORDER
Brion Corporation of Nashville, et al.	:	
	:	
Appellees		

Before WEICK and ENGEL, Circuit Judges and HILLMAN U. S. District Judge.*

No active judge having requested that a vote be taken on the suggestion of appellant that his petition for rehearing be heard en banc, said petition for rehearing was referred to the panel for disposition.

Upon consideration, we are the opinion that the

issues of the appeal were adequately dwelled upon in our order and that the petition for rehearing lacks merit.

It is therefore ordered that the petition for rehearing be denied.

ENTERED BY ORDER OF THE COURT

Clerk

* Honorable Douglas W. Hillman, United States District Judge for the Western District of Michigan, sitting by designation.